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Bill 1 BUH  
DATE 2-6-09  
HB 391

#### HEARING HB 391—RESRICTIVE COVENANT

Mr. Chairman and Committee members—I am Ed Butcher Senior analyst/Regional Manager for Aftco the largest dental /health care business consulting company in the U.S...

I have spent twenty years working with dentists and their lawyers structuring transition agreements. A central issue in any transitional contractual Agreement must address a restrictive covenant to protect the equity of the practice owner. This is especially important for an employee who is a potential purchaser or partner in the practice. This legislation is an excellent beginning in framing this issue of protecting the owner's equity from an employee stealing the employer's business.

To understand the importance of this issue, one must understand that 80% of the value of a dental practice is under the category of "Goodwill" which is defined as the relationship which has been developed between the doctor and his patients. Dental patients, by a large margin select a dentist based on the recommendations of a practice patient. A new dentist must have the senior dentist transfer that relationship to the new dentist.

If a new dentist wishes to be employed by a senior dentist in order to make money, improve his skills under the tutoring of the senior dentist owner of the business, it is very legitimate for the new dentist to sign an agreement pledging not to violate the confidentiality or solicit the patients or staff from the practice as basic terms of the employment situation.

These Agreements are freely entered into and yet is from time to time challenged by an unscrupulous former employee. Attorneys tend to purposely structure restrictive covenants in vague terms and leave out important components which creates potentially litigious situations. (I would not want to suggest this occurs because of incompetent attorneys.) The major difficulty rests on poorly outlined requirements in statute which is what Dr. Robert's legislation corrects.

I work in 13 different states and poorly outlined statutes make it difficult to clearly define the restrictive covenant. This varies greatly between states and this legislation is important defining in defining this important issue. We are talking about anywhere from a couple hundred thousand of dollars to over a million dollars of equity which is being defended.

From my experience and perspective, I would like to see this bill expanded to be inclusive of all parties who contractually agree to accept a restrictive covenant, but the title of this bill probably would not permit that expansion.

I urge the committee to provide this clear and concise non-compete language in Montana statutes.

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